

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB EDTS 14-01 Pub. Rec./ Division of Emergency Management

SPONSOR(S): Economic Development & Tourism Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Economic Development & Tourism Subcommittee	11 Y, 0 N	Duncan	West

SUMMARY ANALYSIS

Unless specifically exempted, all state agency records in Florida are available for public inspection. Current law provides an exemption for information furnished by a person to an agency for the purpose of being provided with emergency notification but does not provide an exemption for personal identifying information provided by a person or business to an agency for emergency planning. Certain personal identifying information can include sensitive information that when open to public records requests, serves as a disincentive to engage in emergency planning.

The Proposed Committee Bill (PCB) narrowly expands the current public records exemption relating to emergency notification to provide that any personal identifying information provided by a person or business to an agency for the purpose of being provided assistance with emergency planning is exempt from s. 119.071(1), F.S., and s. 24(a), Art. I of the State Constitution.

As provided in current law, the PCB is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall be repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.

The PCB also provides a statement of public necessity for the exemption. The statement provides that:

- The Division of Emergency Management manages a statewide public awareness program to educate the public to be self-sufficient for up to 72 hours following a natural or manmade disaster.
- The public education campaign encourages individuals, families, and businesses to develop disaster plans in preparation of and in response to natural or manmade disasters.
- Emergency plans may include sensitive information such as alternate locations for families to meet or business relocation in the event of building damage; business contacts, including utility providers, suppliers, and employees; backup suppliers for key materials and services depended upon by the business; important records and documents that the business needs to operate; and emergency community contacts and disaster resources.
- The potential disclosure of sensitive information has served as a disincentive for creating a disaster plan, particularly among businesses that fear that the disclosure of sensitive information may place their businesses at a competitive disadvantage.
- The harm that may result from the release of information used as part of emergency planning for the preparation of and in response to a natural or manmade disaster outweighs any public benefit that may be derived from disclosure of the information.

The bill does not appear to have a fiscal impact on state or local government revenues.

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Public Records Law

Article I, s. 24(a) of the State Constitution, sets forth the state's public policy regarding access to government records. The State Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish its purpose.¹

Public policy regarding access to government records is addressed further in Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

If, in reenacting an exemption that will repeal, the exemption is expanded, a public necessity statement and a two-thirds vote for passage in each chamber of the legislature is required.³ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created⁴ then a public necessity statement and a two-thirds vote for passage are not required.

The Act sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

Public Records Law Exemption Relating to Emergencies

Currently, any information provided by a person to an agency for the purpose of being notified of an emergency by the agency, including the person's name, address, telephone number, e-mail address, or other electronic communication address, is exempt from s. 119.071(1), F.S., and s. 24(a), Art. I of the State Constitution. This exemption applies to information held by an agency before, on, or after the effective date of the exemption.⁵

¹ Article I, s. 24(c) of the State Constitution

² Section 119.15, F.S.

³ Article I, s. 24(c) of the State Constitution

⁴ An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

⁵ Section 119.071(5)(j)1., F.S.

The exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.⁶

Information Provided to the Division of Emergency Management

As part of its emergency planning responsibilities, the Division of Emergency Management manages a statewide public awareness program to educate the public to be self-sufficient for up to 72 hours following a natural or manmade disaster. The public education campaign encourages individuals, families, and businesses to develop disaster plans in preparation of and in response to natural or manmade disasters. Emergency plans may include sensitive information such as alternate locations for families to meet or business relocation in the event of building damage; business contacts, including utility providers, suppliers, and employees; backup suppliers for key materials and services depended upon by the business; important records and documents that the business needs to operate; and emergency community contacts and disaster resources.

The potential disclosure of sensitive information has served as a disincentive for creating a disaster plan, particularly among businesses that fear that the disclosure of sensitive information may place their businesses at a competitive disadvantage.

Effect of Proposed Changes

The Proposed Committee Bill expands the current public records exemption relating to emergency notification to provide that any personal identifying information provided by a person or business to an agency for the purpose of being provided assistance with emergency planning by the agency is exempt from s. 119.071(1), F.S., and s. 24(a), Art. I of the State Constitution.

Article I, s. 24(c) of the Florida Constitution requires a law creating a new public records exemption to contain a public necessity statement justifying the exemption; therefore, this PCB contains a public necessity statement.

B. SECTION DIRECTORY:

Section 1: Amends s.119.71(5)(j), F.S., relating to other personal information, to provide that any personal identifying information provided by a person or business to an agency for the purpose of being provided assistance with emergency planning by the agency is exempt from s. 119.071(1), F.S., and s. 24(a), Art. I of the State Constitution.

Section 2: Provides a public necessity statement.

Section 3: Provides an effective date of July1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

⁶ Section 119.071(5)(j)2., F.S.

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for passage.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A.